

1 STEPHEN R. HARRIS, ESQ.
2 Nevada Bar No. 001463
3 HARRIS LAW PRACTICE LLC
4 6151 Lakeside Drive, Suite 2100
5 Reno, Nevada 89511
6 Telephone: (775) 786-7600
7 E-Mail: steve@harrislawreno.com
8 Attorneys for Plaintiff

9
10 UNITED STATES BANKRUPTCY COURT
11 FOR THE DISTRICT OF NEVADA

12 * * * * *

13 IN RE:

14 Case No.: BK-15-51099-btb
15 (Chapter 7)

16 KENNETH PATTERSON

17 Debtor.

18 _____ /
19 BASIL M. HANTASH,

Adversary Case No. _____

20 Plaintiff,
21 vs.

22 **ADVERSARY COMPLAINT FOR DENIAL
23 OF DISCHARGE OF OBLIGATION (11
U.S.C. § 523(a)(6) and 523(a)(2))**

24 KENNETH S. PATTERSON

25 Defendant.
26 _____ /

27 Plaintiff BASIL M. HANTASH (“Plaintiff”), by and through his counsel, Stephen R.
28 Harris, Esq., of Harris Law Practice LLC, as and for his claims for relief against the Defendant,
KENNETH S. PATTERSON (“Debtor” or “Defendant”), hereby avers and alleges as follows:

29 **JURISDICTIONAL ALLEGATIONS**

30 1. The above-named case was commenced by the filing of a Voluntary Petition for
31 Relief under Chapter 7 of Title 11, United States Code, by Kenneth Patterson, on August 9,
32 2015.

2. This adversary proceeding arises under Title 11 United States Code, and that the above entitled Court therefore has jurisdiction over this matter pursuant to Sections 157 and 1334 of Title 28, United States Code.

3. This adversary proceeding is brought pursuant to Section 523(a)(6) of Title 11, United States Code, Section 157(b)(2)(j) of Title 28, United States Code, and Rule 7001 of the Federal Rules of Bankruptcy Procedure, and is therefore a core proceeding. The Plaintiff consents to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

4. Plaintiff Basil M. Hantash is a judgment creditor of Kenneth S. Patterson by virtue of a judgment entered in the Superior Court of the State of California In and For the County of Fresno in Case No. 13-CECG-0387.

5. Defendant Kenneth S. Patterson is the Debtor in the above-named Chapter 7
bankruptcy case and is allegedly a resident of Douglas County, State of Nevada.

GENERAL ALLEGATIONS

6. Plaintiff incorporates the allegations contained in paragraphs 1 through 5 as though fully set forth herein.

7. The Debtor filed his Chapter 7 Petition on August 9, 2015.

8. A Statement of Decision filed October 10, 2014, and a Judgment filed on March 30, 2015 (collectively the "Judgment") in Case No. 13-CECG-00837 in the Superior Court of California, County of Fresno, Unlimited Civil Division ("Civil Case") was entered in favor of Basil M. Hantash on September 19, 2014. In that Judgment, the Plaintiff was awarded compensatory damages in the amount of \$209,433.02 on the basis of breach of contract and conversion, and punitive damages in the amount of \$100,000.00, plus costs of suit. A copy of the Judgment is attached hereto as Exhibit A.

9. The Civil Case arose from the Defendant's tenancy in real property owned by the Plaintiff located at 10336 N. Archie Avenue, Fresno, California ("Real Property"). The Defendant abandoned the Real Property at some time between June and August of 2012. The

1 Plaintiff resides in Northern California, and was unaware of the Defendant's abandonment of
2 the Real Property until November of 2012. The Plaintiff then travelled to the Real Property on
3 December 2, 2012. At that time it was determined that significant damage had been done to the
4 Real Property by Defendant – appliances and the sound system had been removed from the
5 house, marijuana had been left in the house, and the house required approximately \$70,000.00
6 in repairs.

7 10. The Defendant's actions in damaging Plaintiff's Real Property were wrongful,
8 intentional and done necessarily to produce harm without just cause or excuse.

9 11. The Civil Court determined that the Plaintiff was entitled to a judgment in the
10 total amount of \$309,433.02. The Judgment is based on (1) conversion of the Plaintiff's
11 personal property by removal of appliances from the home with an estimated value of
12 \$38,663.16, (2) \$100,000.00 in punitive damages for that conversion; (3) breach of contract on
13 the basis of unpaid rent from December of 2013 through March of 2014 in the amount of
14 \$131,510.47, as the house had been deemed uninhabitable, late fees in the amount of \$7,515.83,
15 \$70,406.72 for damage to the premises (which sum includes the conversion value); and (4)
16 provided that the Plaintiff could collect costs of suit.

17 12. The Judgment amount is non-dischargeable on the basis that it is the result of
18 "willful and malicious injury by the debtor to another entity or to the property of another
19 entity", as provided in 11 U.S.C. § 523(a)(6).

20 13. Additionally, at the time Defendant submitted his application to rent the Real
21 Property, Defendant made material fraudulent representations to Plaintiff in order to
22 fraudulently induce the Plaintiff to lease the property to the Defendant, claiming to own
23 significantly valuable real property in Las Vegas, Nevada. Those claims later proved to be
24 untrue, and no such properties are indicated in the Defendant's Schedule A.

FIRST CLAIM FOR RELIEF

(Willful and Malicious Destruction of Property 11 U.S.C § 523(a)(6))

27 14. Plaintiff alleges, realleges and incorporates by reference each and every
28 allegation contained in paragraphs 1 through 13 as if fully set forth herein.

15. The Debtor willfully and maliciously damaged the Real Property owned by the Plaintiff, willfully and maliciously converted the use of the Real Property to his benefit without consideration to the Plaintiff with the intent to do harm, and willfully and maliciously caused the Plaintiff to incur attorney's fees and costs.

16. Defendant's actions against the Plaintiff were without just cause or excuse.

17. Defendant's willful and malicious destruction of Plaintiff's property caused damages to the Plaintiff in the amount of the Judgement.

18. As a result of the foregoing, discharge of the Defendant's Judgment obligation to Plaintiff must be denied pursuant to 11 U.S.C. § 523(a)(6).

SECOND CLAIM FOR RELIEF

(Fraud – Nondischargeability of Claim based on §523(a)(2))

19. Plaintiff alleges, realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 18 as if fully set forth herein.

20. Defendant fraudulently induced the Plaintiff to lease the Real Property to him by providing improper and untrue financial statements indicating that the Defendant had the financial strength to satisfy his obligations to the Plaintiff under the Lease Agreement.

21. As a result of the Defendant's fraudulent financial representations, Plaintiff was deceived into entering into a lease agreement that the Defendant had no intention of honoring, thereby causing damages to the Plaintiff in the amount of the Judgment.

22. As a result of the foregoing, discharge of the Defendant's Judgment obligation to Plaintiff must be denied pursuant to 11 U.S.C. § 523(a)(2).

WHEREFORE, Plaintiff prays for judgment against the Defendant above named as follows:

1. On the First Claim for Relief, for denial discharge as to Defendant's Judgment obligation to Plaintiff in the amount of \$309,433.01 plus costs of suit, pursuant to 11 U.S.C § 523(a)(6);

2. On the Second Claim for Relief, for denial of discharge as to Defendant's Judgment obligation to Plaintiff in the amount of \$309,433.01 plus costs of suit pursuant to 11 U.S.C. § 523(a)(2); and
 3. For such other relief as the Court may deem appropriate under the circumstances.

DATED this 6th day of November, 2015.

HARRIS LAW PRACTICE LLC
STEPHEN R. HARRIS, ESQ.

/s/ Stephen R. Harris

Atorneys for Plaintiff

EXHIBIT “A”

EXHIBIT “A”

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): ARTURO E. SANDOVAL, ESQ. SBN 227077 FOLEY & MANSFIELD, PLLP 300 LAKESHORE DRIVE SUITE 1900 OAKLAND, CA. 94612 TELEPHONE NO.: (510) 467-1000 FAX NO. (Optional): (510) 467-1000 E-MAIL ADDRESS (Optional): asandoval@foleymansfield.com ATTORNEY FOR (Name): 		JUD-100
SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO STREET ADDRESS: 1130 O Street, Fresno, CA 93721 MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: 		<small>FOR COURT USE ONLY</small> FILED MAR 30 2015 FRESNO COUNTY SUPERIOR COURT By <i>Sgt</i> DEPT. 502
PLAINTIFF: Basil M. Hantash DEFENDANT: Kenneth S. Patterson		
<input type="checkbox"/> JUDGMENT <input type="checkbox"/> By Clerk <input type="checkbox"/> By Default <input type="checkbox"/> By Court <input type="checkbox"/> On Stipulation		<small>CASE NUMBER:</small> 13 CECG 00837

1. **BY DEFAULT**
- a. Defendant was properly served with a copy of the summons and complaint.
 - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - c. Defendant's default was entered by the clerk upon plaintiff's application.
 - d. **Clerk's Judgment** (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
 - e. **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
 - (1) plaintiff's testimony and other evidence.
 - (2) plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. **ON STIPULATION**
- a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
 - b. the signed written stipulation was filed in the case.
 - c. the stipulation was stated in open court the stipulation was stated on the record.
3. **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
- a. The case was tried on (date and time): June 2, 2014, June 30, 2014, and July 1, 2014 before (name of judicial officer): Hon. Donald S. Black
 - b. Appearances by:

<input type="checkbox"/> Plaintiff (name each):	<input type="checkbox"/> Plaintiff's attorney (name each):
(1) Basil M. Hantash	(1) Arturo E. Sandoval
(2)	Foley & Mansfield, PLLP
<input type="checkbox"/> Continued on Attachment 3b.	(2) Jeffrey M. Gebhardt
	Foley & Mansfield, PLLP
 - c. Defendant (name each):

<input type="checkbox"/> Defendant (name each):	<input type="checkbox"/> Defendant's attorney (name each):
(1) Kenneth S. Patterson	(1) Douglas V. Thornton
(2)	Rummonds Thornton, LLP
<input type="checkbox"/> Continued on Attachment 3b.	(2) Brian N. Folland
	The Folland Law Group
 - d. A statement of decision (Code Civ. Proc., § 632) was not was requested.

FILED BY FAX

PLAINTIFF: Basil M. Hantash	CASE NUMBER: 13 CECG 00837
DEFENDANT: Kenneth S. Patterson	

JUDGMENT IS ENTERED AS FOLLOWS BY: THE COURT THE CLERK

4. Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is:

a. for plaintiff (name each):

Basil M. Hantash

and against defendant (names):

Kenneth S. Patterson

Continued on Attachment 5a.

c. for cross-complainant (name each):

and against cross-defendant (name each):

Continued on Attachment 5c.

b. for defendant (name each):

d. for cross-defendant (name each):

6. Amount.

a. Defendant named in Item 5a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/>	Damages	\$ 209,433
(2) <input checked="" type="checkbox"/>	Prejudgment interest at the annual rate of %	\$
(3) <input checked="" type="checkbox"/>	Attorney fees	\$
(4) <input checked="" type="checkbox"/>	Costs	\$
(5) <input checked="" type="checkbox"/>	Other (specify): Punitive	\$ 100,000
(6) TOTAL		\$ 309,433

c. Cross-defendant named in Item 5c above must pay cross-complainant on the cross-complaint:

(1) <input type="checkbox"/>	Damages	\$
(2) <input type="checkbox"/>	Prejudgment interest at the annual rate of %	\$
(3) <input type="checkbox"/>	Attorney fees	\$
(4) <input type="checkbox"/>	Costs	\$
(5) <input type="checkbox"/>	Other (specify):	\$
(6) TOTAL		\$

b. Plaintiff to receive nothing from defendant named in item 5b.

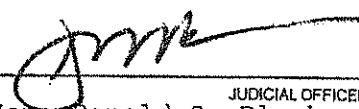
Defendant named in item 5b to recover costs \$
 and attorney fees \$

d. Cross-complainant to receive nothing from cross-defendant named in item 5d.

Cross-defendant named in item 5d to recover costs \$
 and attorney fees \$

7. Other (specify): The Court's statement of decision is attached.

Date: 8-30-15


 JUDICIAL OFFICER
 Hon. Donald S. Black

Date:

Clerk, by _____, Deputy

(SEAL)

CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy

SUPERIOR COURT OF CALIFORNIA COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, CA 93724 (559) 457-1900	FOR JRT USE ONLY
TITLE OF CASE: Basil M. Hantash vs. Kenneth S Patterson	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: 13CECG00837 DSB

Name and address of person served:

Arturo Sandoval
 Foley & Mansfield P.L.L.P
 300 Lakeside Drive Ste #1900
 Oakland, CA 94612

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the Statement of Decision was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at, Fresno California, on:

Date: October 10, 2014

Clerk, by N. Loveless, Deputy

Arturo Sandoval, Foley & Mansfield P.L.L.P, 300 Lakeside Drive Ste #1900, Oakland CA 94612
 Kenneth Patterson, 2261 Rush Ave, Fresno CA 93730

OCT 16 2014

FILED

OCT 10 2014

FRESNO COUNTY SUPERIOR COURT
By _____ DEPT. 502

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
UNLIMITED CIVIL DIVISION, B.F. SISK COURTHOUSE

BASIL M. HANTASH,

Plaintiff,

v.

KENNETH S. PATTERSON, and DOES
1 to 25, inclusive,

Defendants.

Case No.: 13CECG00837

STATEMENT OF DECISION

I.

INTRODUCTION

This case presents a landlord-tenant dispute related to alleged unpaid rent and late fees, alleged damage cause by the tenant to the demised property, and alleged conversions of appliances and other personal property from the premises. Plaintiff, Basil M. Hantash, the owner/landlord, is represented by Foley & Mansfield P.L.L.P., by Arturo E. Sandoval. Defendant, Kenneth S. Patterson, the tenant, is represented by The Folland Law Group, by Brian

1 Folland, and Rummonds, Barrons & Thornton, by Douglas V. Thornton. The
2 matter was tried before the undersigned, sitting without a jury. Following the
3 trial, the parties submitted briefs and proposed statements of decision. After
4 having considered the evidence and the parties' briefs, the court issued a
5 Tentative and Proposed Statement of Decision.
6

7 After the issuance of the court's Tentative and Proposed Statement of
8 Decision, defendant filed "Defendant's Opposition to Tentative and Proposed
9 Statement of Decision" and plaintiff filed "Plaintiff's Reply to Defendant's
10 Opposition to Tentative and Proposed Statement of Decision." The court has
11 read and considered these pleadings. Recognizing that the statement of
12 decision is only required to explain the legal and factual basis of the decision
13 as to each of the principal controverted issues at trial (Cal. Civ. Proc. Code §
14 632), and that the court need not discuss each issue in a party's objection
15 (*Wolf v. Lipsy* (1985) 163 Cal. App. 3d 633, 643), or how it resolved
16 intermediate evidentiary conflicts or respond point by point to the various
17 issues posed in the request for statement of decision (*Muzquiz v. City of*
18 *Emeryville* (2000) 79 Cal. App. 4th 1106, 1126), the court now issues this
19 Statement of Decision.
20

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 II.
2
3

4 STATEMENT OF FACTS¹
5
6

7 Plaintiff, a practicing physician, is the owner of the subject property,
8 which is located at 10336 N. Archie Avenue, Fresno, California. The property
9 is a relatively large, single family home, located in an upscale, gated
10 subdivision in Northeast Fresno near Fort Washington Country Club.

11 After several email communications, plaintiff and defendant entered into
12 a written lease agreement, the terms of which included:

- 13 • Payment of rent of \$3,561 per month.
14 • Commencing March 16, 2010 and expiring February 28, 2011.
15 • Occupants of the premises limited to defendant "and family."
16 • Requirement that subletting or assigning of the lease be done only with
17 plaintiff's written permission.
18 • Defendant's agreement that the premises had been inspected and
19 acknowledgement that "all items, fixtures, appliances, and
20 appurtenances are in complete working order."
21 • Defendant's agreement to keep the premises in "neat and sanitary
22 condition."
23 • Defendant's agreement not to make alterations, including painting or
24 wallpapering, without plaintiff's written consent.
25 • Defendant's agreement to pay a late charge of 6% of the current rental
26 amount if rent is not paid when due.

27
28 ¹The court has considered testimony of the witnesses and other evidence, resolved conflicts in
the evidence, and finds the facts to be as stated herein.

- Defendant's agreement that no pets shall be kept on the premises without plaintiff's written consent.

When defendant went into possession of the property it was in excellent condition. Appliances were high end and in good working order. They included the usual kitchen appliances such as a refrigerator, stove, and dishwasher, as well as an air purification system and surround sound system with speakers.

Although defendant was perpetually late in making his rent payments under the lease, the parties entered into a second lease effective March 1, 2011.² The term of the second lease was March 1, 2011 to February 28, 2012. Under the second lease, the rent was increased to \$4,000 per month, but defendant was given a ten day grace period after the rent was due during which no late fee would be charged. Rent increases were limited to annual consumer price index plus two per cent. Otherwise, in material respects, the provisions of the second lease were the same as the provisions of the first lease.

When the second lease expired on February 28, 2012, though defendant continued to occupy the premises, the parties did not enter into a new lease. Rather, defendant continued in possession pursuant to a verbal agreement pursuant to which defendant agreed to pay \$4,250 per month in rent and the terms and conditions of the expired lease continued in effect.

During the course of defendant's tenancy, people other than defendant's family occupied the premises. Among others, defendant's fiancée lived there for at least a time. In addition, as has been mentioned, defendant was virtually

² Although defendant apparently denies signing the second lease, he did not testify at the trial and the court, as the trier of fact, has compared the signature on the second lease to the signature on the first lease, as to which there is no dispute, and finds defendant did sign the second lease. Moreover, the circumstantial evidence suggests defendant did sign the second lease.

1 always, if not always, late in paying his rent. As a result of these facts, plaintiff
2 commenced an unlawful detainer proceeding against defendant in March,
3 2012.

4 Though it is uncertain when defendant and the others who were
5 occupying the property actually left, they never formally relinquished
6 possession and plaintiff did not learn that the property was vacant until
7 around Thanksgiving, 2012 when he received a telephone call from an
8 employee of the management company for the homeowners' association, John
9 Sher. Among other things, Sher advised plaintiff that the property appeared
10 to be vacant. On December 2, 2012, plaintiff visited the property and found
11 that it indeed was vacant and that it was in terrible condition. The pool was
12 green and mosquito infested. Appliances and the surround sound system had
13 been removed from the house. There were large quantities of marijuana and
14 drug paraphernalia in the garage. In the house were various items of mail
15 addressed to defendant.³

16 Plaintiff has repaired most of the damage to the house and replaced the
17 missing appliances. He has incurred costs related to those activities in the
18 total amount of \$70,406.72, which he seeks from defendant. He also seeks
19 unpaid rent, late fees, a partially unpaid deposit, additional tenant fees, pet

20
21
22³ Though defendant did not testify, the court understands defendant contends the damage to
23 the house was caused by squatters. The evidence belies this. Officer Valdez testified the
24 neighborhood did not lend itself to squatters because of attentive neighbors. There were no
25 mattresses or food wrappings among the refuse found in the house. Officer Valdez further
26 testified that there were no pry marks at the point of entry, which indicates the vandalism was
27 done by someone familiar with the property. Officer Valdez also testified that it is unusual in a
28 standard burglary for large items, such as appliances to be taken because there simply is not
enough time to do so. Finally, Kim Jacobsen, a neighbor, testified that after defendant moved
out, he saw defendant in the driveway with a truck and large trailer. The circumstantial
evidence overwhelmingly supports the finding that it was defendant who removed the
appliances and other property and caused the damage and defendant himself did not deny that
he did so.

1 fees, and legal fees. Finally plaintiff seeks punitive damages related to
2 defendant's alleged misrepresentation of his financial condition prior to the
3 first lease and his removal of appliances and other property from the house.
4

5 Defendant disputes that plaintiff is entitled to some of the late fees he
6 seeks, the additional tenant fee, and the pet fee. He also contends plaintiff did
7 not prove he was responsible for the removal of plaintiff's property. He also
8 seeks a credit for monies he was required to expend for repairs to the house
9 during his tenancy.

10 As will be explained below, the court will find plaintiff has proven his
11 claim for breach of contract and will award damages for unpaid rent through
12 the time the house was made habitable on March 22, 2013. The court will also
13 award damages for some of the late fees sought by plaintiff, but will not include
14 compound interest as computed by plaintiff. Relief will be denied for pet fees,
15 which were not included in the lease or otherwise agreed to and the additional
16 tenant who was not a family member. The court will also award plaintiff
17 damages for conversion, including punitive damages. The court will deny relief
18 for fraud, which was not proven and will deny defendant credit for repairs he
19 allegedly had made to the house.
20

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 III.
2
3

4 DISCUSSION
5

6 A. Breach of Contract.
7

8 To recover damages for breach of contract, plaintiff must prove all of the
9 following: (1) that plaintiff and defendant entered into a contract; (2) that
10 plaintiff did all, or substantially all of the significant things that the contract
11 required him to do, or that his performance was excused; (3) that all conditions
12 required by the contract for defendant's performance had occurred or were
13 excused; (4) that defendant either failed to do something the contract required
14 or did something the contract prohibited; and, (5) that plaintiff was harmed by
15 that failure. (Judicial Council of California Civil Jury Instructions (2013) CACI
16 No. 303.)

17 The court finds the parties entered into two written leases and thereafter
18 a month-to-month tenancy on the same terms and conditions as the written
19 lease that had just expired. (Cal. Civ. Code § 1945.) Under these agreements,
20 defendant was required to, among other things: (1) pay rent in the amounts
21 and at the times specified therein; (2) pay late fees in the amounts specified
22 therein; (3) keep the premises in neat and sanitary condition; and, (4) make no
23 alterations to the premises. In addition, defendant was precluded under the
24 agreements from (1) having non-family members reside on the property; (2)
25 having animal on the property without plaintiff's prior written consent.

26 The court further finds plaintiff performed all conditions required by him
27 to be performed under the agreements between the parties. Specifically,

1 plaintiff made available the premises located at 10336 N. Archie in habitable
2 condition for occupancy by defendant and his family.

3 Defendant, however, breached the agreements between the parties by
4 completely failing to pay rent when it was due, failing to pay late fees, and
5 allowing non-family members to reside on the property. He also breached the
6 agreements by altering them in that he removed appliances and other
7 appurtenances and by allowing them to become filthy. Finally, defendant
8 breached the agreements between the parties by allowing pets to stay on the
9 premises.

10 Plaintiff has been damaged by defendant's breaches. No evidence was
11 received as to damages caused by having pets on the property and there was
12 no provision in any of the agreements between the party permitting plaintiff to
13 charge \$100 per month for pets. Further, no damages are awarded for allowing
14 non-family members to stay on the property because there was no evidence
15 that plaintiff gave defendant written consent, which was necessary under the
16 agreements to trigger the monthly fee. However, the court finds plaintiff was
17 damaged in the amount of rent and late fees defendant failed to pay, together
18 with the damage caused by defendant's alteration of and damage to the
19 property and his failure to keep the property neat and tidy.

20 As to rent, the court awards plaintiff damages of \$131, 510.47,
21 consisting of the unpaid rent reflected on Exhibit 203, together with rent for
22 December, 2013 through March, 2014, when the premises were relet. The
23 agreements between the parties permit late fees calculated on the "current
24 rental amount." The court interprets "current rental amount" to mean only the
25 rent due for the current month, and not all of the unpaid rent. The
26
27
28

1 agreements do not permit plaintiff to compound late fees or to assess late fees
2 monthly on the total unpaid rent to date, as plaintiff has done. Accordingly,
3 the court awards damages for late fees of \$7,515.83, again adding late fees for
4 four months to the amount computed on Exhibit 203. Finally, the court
5 awards damages for alterations and damage to the premises of \$70,406.72.
6 Plaintiff's total damages for breach of contract are \$209,433.02.
7

8

9 **B. Fraud.**

10

11

12 To establish a claim for fraud plaintiff must prove: (1) defendant
13 represented an important fact was true; (2) the representation was false; (3)
14 defendant knew the representation was false when he made it or made it
15 recklessly and without regard for its truth; (4) that defendant intended that
16 plaintiff rely on the representation; (5) plaintiff reasonably relied on the
17 representation; (6) plaintiff was harmed; and, (7) plaintiff's reliance on the
18 representation was a substantial factor in causing his harm. (Judicial Council
19 of California Civil Jury Instructions (2013) CACI No. 1900.)
20

21

22

23

24

25

26

27

28

The court resolves the fraud claim in defendant's favor. Plaintiff argued defendant knowingly misrepresented his financial condition before the parties entered into the first lease. While it is correct that defendant made a representation of his financial condition that indicated a considerable net worth, including ownership of a very valuable piece of real estate in Las Vegas, the court finds plaintiff did not prove the representation was false.

1 There was no direct evidence of defendant's financial condition at trial.
2 Plaintiff argues the court may infer the falsity of the representation from the
3 fact that defendant did not pay his rent. However, no evidence was introduced
4 which suggested there were not other possible causes for defendant's failure to
5 pay his rent and the court is unwilling to make the leap required to infer it was
6 because his financial condition was not as he represented.
7
8

9 C. Conversion.

10 Conversion requires proof: (1) that plaintiff owned certain personal
11 property; (2) that defendant intentionally and substantially interfered with
12 plaintiff's property by taking possession of it or destroying it; (3) that plaintiff
13 did not consent; (4) that plaintiff was harmed; and, (5) that defendant's
14 conduct was a substantial factor in causing plaintiff's harm. (Judicial Council
15 of California Civil Jury Instructions (2013) CACI No. 2100.)

16 The court finds defendant removed items of personal property from the
17 premises without plaintiff's consent and has refused to return any of them.
18 The damages suffered by plaintiff as reflected in items 1 (Subzero) through 20
19 (wrought iron fence), 22 (solar landscaping light replacement), and 24 (pool
20 sweeper) on page 2 of Exhibit 203 are \$38,663.26. These damages are
21 duplicative of some of the damages awarded plaintiff for breach of contract and
22 will only be reflected once in the court's judgment.
23
24

25 ///
26
27 ///
28

1 D. Punitive Damages.

2
3 CACI 3949 provides as follows:

4 You must now decide the amount, if any, that you
5 should award [*name of plaintiff*] in punitive damages.

6 The purposes of punitive damages are to punish a
7 wrongdoer for the conduct that harmed the plaintiff
8 and to discourage similar conduct in the future.

9
10 There is no fixed formula for determining the amount
11 of punitive damages, and you are not required to
12 award any punitive damages. If you decide to award
13 punitive damages, you should consider all of the
14 following factors separately for each defendant in
15 determining the amount:

16 (a) How reprehensible was that defendant's conduct?

17 In deciding how reprehensible a defendant's conduct
18 was, you may consider, among other factors:

- 19 1 Whether the conduct caused physical harm;
20 2 Whether the defendant disregarded the health or
21 safety of others;
22 3 Whether [*name of plaintiff*] was financially weak or
23 vulnerable and the defendant knew [*name of plaintiff*]
24 was financially weak or vulnerable and took advantage
25 of [him/her/it];

26
27
28

1 4 Whether the defendant's conduct involved a pattern
2 or practice; and

3 5 Whether the defendant acted with trickery or deceit.

4 (b) Is there a reasonable relationship between the
5 amount of punitive damages and [name of plaintiff]'s
6 harm [or between the amount of punitive damages and
7 potential harm to [name of plaintiff] that the defendant
8 knew was likely to occur because of [his/her/its]
9 conduct?]

10 (c) In view of that defendant's financial condition, what
11 amount is necessary to punish [him/her/it] and
12 discourage future wrongful conduct? You may not
13 increase the punitive award above an amount that is
14 otherwise appropriate merely because a defendant has
15 substantial financial resources. [Any award you
16 impose may not exceed that defendant's ability to pay.]

17 [Punitive damages may not be used to punish a
18 defendant for the impact of [his/her/its] alleged
19 misconduct on persons other than [name of plaintiff].]

20 (Judicial Council of California Civil Jury Instructions (2013) CACI No. 3949.)

21 "In making the ... assessment [the court is] afforded guidance by certain
22 established principles, all of which are grounded in the purpose and function of
23 punitive damages. (Footnote omitted.) One factor is the particular nature of the
24 defendant's acts in light of the whole record; clearly, different acts may be of
25 varying degrees of reprehensibility, and the more reprehensible the act, the

1 greater the appropriate punishment, assuming all other factors are equal.
2 (Citations.) Another relevant yardstick is the amount of compensatory damages
3 awarded; in general, even an act of considerable reprehensibility will not be
4 seen to justify a proportionally high amount of punitive damages if the actual
5 harm suffered thereby is small. (Citation.) Also to be considered is the wealth of
6 the particular defendant; obviously, the function of deterrence ... will not be
7 served if the wealth of the defendant allows him to absorb the award with little
8 or no discomfort. (Citations.) By the same token, of course, the function of
9 punitive damages is not served by an award which, in light of the defendant's
10 wealth and the gravity of the particular act, exceeds the level necessary to
11 properly punish and deter." (*Neal v. Farmers Ins. Exch.* (1978) 21 Cal. 3d 910,
12 928.)
13

14
15 " "[T]he most important indicium of the reasonableness of a punitive
16 damages award is the degree of reprehensibility of the defendant's conduct."
17 (Citation.) We have instructed courts to determine the reprehensibility of a
18 defendant by considering whether: the harm caused was physical as opposed
19 to economic; the tortious conduct evinced an indifference to or a reckless
20 disregard of the health or safety of others; the target of the conduct had
21 financial vulnerability; the conduct involved repeated actions or was an isolated
22 incident; and the harm was the result of intentional malice, trickery, or deceit,
23 or mere accident. (Citation.) The existence of any one of these factors weighing
24 in favor of a plaintiff may not be sufficient to sustain a punitive damages
25 award; and the absence of all of them renders any award suspect. It should be
26 presumed a plaintiff has been made whole for his injuries by compensatory
27
28

1 damages, so punitive damages should only be awarded if the defendant's
2 culpability, after having paid compensatory damages, is so reprehensible as to
3 warrant the imposition of further sanctions to achieve punishment or
4 deterrence. (Citation.) (*State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538
5 U.S. 408, 419.)
6

7 The court evaluates defendant's conduct only insofar as it pertains to the
8 conversion claim because that is the only claim that supports an award of
9 punitive damages. As to that claim, the court finds defendant's conduct was
10 significantly reprehensible. Although only financial, and not personal, injury
11 has been proven, defendant acted repeatedly, as he converted a number of
12 separate items of personal property, and intentionally and through
13 misrepresentation of his intentions to plaintiff. As evidence of plaintiff's
14 financial standing, the court accepts defendant's financial statement, received
15 in evidence as Exhibit 9. Based on defendant's conduct, the compensatory
16 damage award related to plaintiff's conversion claim, and defendant's financial
17 condition, the court awards punitive damages of \$100,000.
18

19
20 E. Defendant's Credit Claim.
21

22
23 Defendant maintains he is entitled to a credit for repairs to the property
24 he paid for during his tenancy. This claim is based on the testimony of
25 Kenneth Petrelli, his only witness at trial. Petrelli testified he is a general
26 contractor and has known defendant since he worked with his father on a
27
28

1 number of construction projects going back to the 1970's. He has done work
2 for defendant in the past.

3 Petrelli testified he performed a variety of jobs for defendant on the
4 house, all of which is reflected in invoices he prepared after the fact. However,
5 Petrelli testified to facts which are inherently improbable and, given his
6 relationship with defendant and his family, the court rejects all of his
7 testimony.⁴ Even if the court were to accept Petrelli's testimony, there is no
8 evidence that written notice or an opportunity to repair were ever provided by
9 defendant to plaintiff, as required by the paragraph 14 of the agreements
10 between the parties. Accordingly, defendant's claim for a credit or offset is
11 denied.

13

14

IV.

15

16

DISPOSITION

17

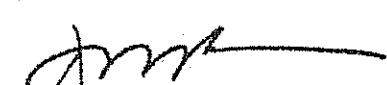
18 The court finds in favor of plaintiff on his claims for breach of contract
19 and conversion and awards compensatory damages of \$209,433.02, punitive
20 damages of \$100,000.00 and plaintiff's costs of suit. The court also finds in
21 favor of defendant on plaintiff's claim for fraud. The court finds plaintiff is the
22 prevailing party herein.

23

24 *First, Petrelli testified he had a client who gave him, without charge, an expensive Viking stove
25 to be installed in the subject house because the oven wasn't working on the stove that had
26 been installed there. Accepting this testimony would require the court to believe that one
27 expensive Viking stove was removed from the house simply because the oven wasn't working
28 and replaced with another similar Viking stove which was essentially given to defendant free of
charge. Second, Petrelli testified that all of his invoices were paid in cash despite the fact that
some were in the thousands of dollars. This is a method of payment which is conveniently
difficult to verify and no attempt was made by defendant to do so through bank statements or
otherwise.

1 Plaintiff is ordered to prepare a form of judgment, seek the approval of
2 defendant as to the form, and submit it to the court for signature.
3
4
5
6
7
8

Dated: October 10, 2014


Donald S. Black
Judge of the Superior Court

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28